How to bring a case to court

Bélgica

1 Do I have to go to court or is there another alternative?

In some cases it is better to make use of the 'Alternative dispute resolution scheme' (see the relevant information pack).

2 Is there any time limit to bring a court action?

The deadlines for bringing a case before the court differ depending on the case. Questions about deadlines can be answered by a lawyer or by a department that provides citizens with information about access to justice.

3 Should I go to a court in this Member State?

See information pack 'Jurisdiction of the courts'

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

See information pack 'Jurisdiction of the courts – Belgium'

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

See information pack 'Jurisdiction of the courts – Belgium'

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

In principle, parties must appear in person or must be represented by a lawyer, pursuant to Section 728(1) of the Belgian Judicial Code (*Gerechtelijk Wetboek*).

With the exception of proceedings before the Court of Cassation (*Hof van Cassatie*) (Sections 478 and 1080 of the Judicial Code), parties can therefore appear in person before the ordinary courts and present their statement and defence themselves. However, the court is permitted to take away this option if it finds that they cannot discuss their case properly or completely as a result of their temper or inexperience (Section 758 of the Judicial Code).

Parties who decide not to bring proceedings before the court in person can engage the services of a lawyer.

The Judicial Code reserves the representation of parties before courts in principle for lawyers. Section 440 of the Judicial Code stipulates that the prerogatives of monopoly on representation relate to the right to address the court, to appear and to be defended by a third party. The members of the bar also have a monopoly to sign unilateral applications, unless otherwise determined by law (Section 1026(5) of the Judicial Code).

At the Court of Cassation, the intervention of a lawyer having the title of advocate of the Court of Cassation is a legal requirement. This requirement does not apply to the civil party in criminal matters (Section 478 of the Judicial Code).

However, the law does provide a number of exceptions to the principle of Section 728 of the Judicial Code, which stipulates that parties shall appear in person or shall be represented by a lawyer when proceedings are instituted and thereafter (Section 728(1) and (2) of the Judicial Code).

The right to represent a party in proceedings also includes the right to institute the proceedings.

In the case of the civil magistrate, the business court and the labour tribunals, parties can be represented not only by a lawyer but also by their spouse or by a blood relative or a relative by marriage who has written power of attorney and is accepted by the court (Section 728(2) of the Judicial Code).

In the case of the labour tribunals (Section 728(3) of the Judicial Code):

the employee (blue-collar or white-collar worker) is represented by the delegate of a representative employees' organisation (trade union representative) who is in possession of a written power of attorney. The trade union representative can perform all actions that form part of this representation in the name of the employee, can address the court and can receive all communications with regard to the handling and adjudication of the dispute;

self-employed people can also be represented by the delegate of a representative organisation of self-employed people in disputes relating to their own rights and obligations in this capacity or in the capacity of disabled persons;

in disputes relating to the application of the law of 7 August 1974 implementing the right to a minimum subsistence level and in disputes relating to the application of the Organic Law of 8 July 1976 on Public Social Welfare Centres (*openbare centra voor maatschappelijk welzijn* – OCMW), the interested party can also be assisted or represented by a delegate from a social organisation that represents the interests of the people referred to in the legislation.

Legal entities, such as trading companies, are only permitted to appear in person (i.e. through the intervention of the competent bodies) or be represented by a lawyer. They are not permitted to make use of the exception explained in more detail below, which is provided for in Section 728(2) of the Judicial Code.

In addition to the exceptions cited, there are a number of statutory exceptions relating to the custody and abduction of children.

This relates more particularly to cases brought on the grounds of:

the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, providing for the return of the child, observance of the right to custody or parental access or the organisation of parental access rights granted in another country and

the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

In these cases the claimant can be represented by the public prosecutor's office (Section 1322quinquies of the Judicial Code) when this claimant has applied to the central authority.

The procedure for determining whether someone can bring proceedings alone, or whether the assistance of a lawyer is required, was described in general terms above. A distinction must also be made according to the manner in which an action can be brought.

Belgian law provides various ways of bringing proceedings before the court. An action can be brought by summons, by voluntary appearance, by an *inter partes* application or by unilateral application (see below). An action is brought by filing an application, i.e. a legal action to defend one's rights.

In principle, an action is brought by the serving of a court bailiff's notification, with a party being summoned to appear (Section 700 of the Judicial Code). The voluntary appearance, the *inter partes* application and the unilateral application are exceptions to this general principle.

The tables below show who performs the actions and whether representation by a lawyer is required, depending on the manner in which an action is brought.

Author of the act depending on the manner in which the action is brought:	
Manner in which the action is brought	**Author of the act**
Summons (Sections 727 to 730 inclusive of the Judicial Code).	The applicant (or its lawyer) asks the court bailiff to serve the summons.
Voluntary appearance (Section 706 of the Judicial Code).	

	The parties involved in the dispute (or their lawyers) present themselves to the court.
Inter partes application (Sections 1034bis to 1034sexies inclusive of the Judicial Code).	The applicant (or its lawyer) brings the action itself.
Unilateral application (Sections 1025 to 1034 inclusive of the Judicial Code).	Apart from in the exceptional cases specifically provided for by law, the intervention of a lawyer is mandatory for the signing and filing of the application (Sections 1026(5) and 1027, first sentence of the Judicial Code).

Representation by a lawyer or not, depending on the manner in which an action is brought:	
Manner in which the action is brought	**Representation by a lawyer**
Summons (Sections 727 to 730 inclusive of the Judicial Code).	Intervention possible but not compulsory.
Voluntary appearance (Section 706 of the Judicial Code).	Intervention possible but not compulsory.
Inter partes application (Sections 1034bis to 1034sexies inclusive of the Judicial Code).	Intervention possible but not compulsory.
Unilateral application (Sections 1025 to 1034 inclusive of the Judicial Code).	Apart from in the exceptional cases specifically provided for by law, the intervention of a lawyer is mandatory for the signing and filing of the application (Sections 1026(5) and 1027, first sentence of the Judicial Code).

The contents of the action depending on the manner in which it is brought:
The usual way of bringing an action is by way of a summons; there is no restriction as regards the subject matter.
The *inter partes* application (Sections 1034bis to 1034sexies inclusive of the Judicial Code) can be used in a number of cases laid down by the law. The most significant provisions in the instituting of proceedings by an *inter partes* application are Sections 704, 813, 1056(2), 1193bis, 1239, 1253ter, 1254, 1320, 1344bis, 1371bis and 1454, second sentence of the Judicial Code and Sections 331, 331bis and 340f of the Civil Code (*Burgerlijk Wetboek*).
These sections relate, in particular, to:
voluntary intervention;
appeal;
particular sales of immoveable property;
maintenance (applications to grant, increase, reduce or abolish maintenance);
applications relating to leases / tenancy agreements;
the protection of persons;
actions relating to the rights and obligations arising from family relationships;
divorce;
provisional budget for attachments.
The actions are brought by an application filed with the court registrar or sent by recorded delivery to the court registry. The parties are summoned by the court registrar to appear on a day set for the hearing by the judge.
The unilateral application (Sections 1025 to 1034 inclusive of the Judicial Code) can only be used in the cases specifically laid down by law, in particular in Sections 584, 585, 588, 594, 606, 708, 1149, 1168, 1177, 1186 to 1189 inclusive, 1192 and 1195 of the Judicial Code. It is also used in cases where adversarial proceedings cannot be brought because there is no opposing party.
The unilateral application is therefore mainly used for unilateral proceedings, for example in cases of absolute need.
The unilateral application must be signed by a lawyer, unless the law stipulates otherwise, otherwise it will be void.
Consequently, representation by a lawyer is compulsory in principle in order to bring an action in the case of a unilateral application.
Where the dispute relates to a subject that falls under the jurisdiction of these courts, the parties can voluntarily present themselves for the purposes of voluntary appearance before the following courts:
the court of first instance;
the labour tribunal;
the business court;
the civil magistrate or
the police court, for civil actions.
In the case of voluntary appearance, the parties requesting a decision shall sign their declaration at the bottom of a record drawn up by the court.
All contentious disputes can be brought before the competent court in this cost-saving and time-saving manner.

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

Anyone wishing to bring an action before the court can contact the reception office or the registry of this court.
Where the document instituting the proceedings is a summons, the bailiff will ensure that the writ is served and will ask the court registry to register it in the cause list following submission of the original or, if appropriate, the copy of the summons served (Section 718 of the Judicial Code). The court registry keeps a register (the cause list) for all the cases. Entry on the cause list is only valid if it takes place no later than the day before the day set for the hearing in respect of which the summons was served. The general cause list is public (Section 719 of the Judicial Code). Respondents can therefore check whether the matter for which they have been summoned has been entered on the general cause list.
In the case of voluntary appearance, the parties or their lawyers ask the court registry to enter the case on the cause list.
The *inter partes* application is submitted, in as many copies as there are interested parties, to the court registry or sent to the court registrar by recorded delivery by the applicant or its lawyer (Section 1034quinquies of the Judicial Code).
A unilateral application is addressed in duplicate by the lawyer to the court that is being called upon to make a decision on the application. It is also filed with the court registry (Section 1027 of the Judicial Code).

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

When it comes to the use of languages, reference must be made to the Act of 15 June 1935 on the use of languages in judicial matters (*wet van 15 juni 1935 op het gebruik de talen in gerechtszaken*) (published in the Moniteur belge/Belgisch Staatsblad on 22 June 1935). This act governs the use of languages in Belgium's civil and business courts.
In principle, the language is determined by the geographical location of the competent court. Pursuant to Section 42 of the Act, there are three linguistic regions: the French, the Dutch and the German linguistic regions. There is also the bilingual conurbation of Brussels (French/Dutch) which, for the purposes of the application of the law, includes the following municipalities: Anderlecht, Auderghem, Berchem-Sainte-Agathe, Brussels, Etterbeek, Evere, Forest,

Ganshoren, Ixelles, Jette, Koekelberg, Molenbeek-Saint-Jean, Saint-Gilles, Saint-Josse-ten-Noode, Schaerbeek, Uccle, Watermael-Boitsfort, Woluwé-Saint-Lambert and Woluwé-Saint-Pierre.

Under certain circumstances, a matter can, however, be referred to a court that uses a different procedural language. Under certain conditions, a change of procedural language may be requested, in principle at the start of the proceedings.

The wording of the claim: a claim which is submitted by summons, by *inter partes* application or by unilateral application must be drawn up in writing and must comply with specific procedural requirements. Once the matter has been entered in the general cause list of a court, the court registrar opens a procedural file. The procedural file is sent to the court before which the action is being brought; where this is an appeal to a court of second instance or where it involves the Court of Cassation, it is also sent to the registry of the higher court.

It is currently not possible to bring an action by fax or e-mail.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

The law does not provide for pre-printed forms to institute proceedings. However, an action must include a number of items of information; if these are not included, the action will be null and void by operation of law.

A writ of summons, an *inter partes* application and a unilateral application must comply with a number of statutory requirements set out in the Judicial Code, otherwise they will be null and void. These elements, which must be included, relate mainly to personal information about the parties involved, the subject of the application, the designation of the competent court and the date of the court hearing.

The writ of summons should therefore include, inter alia, the following information (Sections 43 and 702 of the Judicial Code):

the signature of the court bailiff;

the surname, first names and residence of the applicant and, where appropriate, the applicant's national register or company number;

the surname, first names and residence or, where there is no permanent residence, the current address of the person on whom the summons is served;

the subject matter and a brief summary of the arguments of the action;

the court before which the action is being brought;

the day, month, year and place where the writ was served and

details of the place, date and time of the court hearing.

The *inter partes* application (Section 1034ter of the Judicial Code) shall include:

the day, month and year;

the surname, first name and place of residence of the applicant and, where appropriate, the applicant's title and national register or company number;

the surname, first name, place of residence and, where appropriate, title of the person on whom the summons is to be served;

the subject matter and a brief summary of the arguments of the action;

the court before which the action is being brought;

the signature of the applicant or its lawyer.

A unilateral application must contain the following information (Section 1026 of the Judicial Code):

the day, month and year;

the surname, first name and place of residence of the applicant and, where appropriate, the applicant's title and national register or company number;

the subject matter and a brief outline of the arguments of the action;

the designation of the court that is to hear the action;

the signature of the party's lawyer, unless otherwise provided for by law.

In the case of voluntary appearance at first instance (at the court of first instance, the labour tribunal, the business court, the civil magistrate's court or the police court with regard to civil actions), the action can be brought by means of a joint application by the parties. They must sign and date the bottom of this application, otherwise it will be null and void. The application is filed with the court registrar or sent by recorded delivery to the court registry. The act of filing the application with the court registrar or sending it by recorded delivery is regarded as service. The application is entered on the cause list after the register duties have been paid, where applicable. If the parties or one of the parties make(s) a request to this effect, or if the court deems it necessary, the court will set a date for a court hearing that is within 15 days of the application being filed. The court registrar will then summon the parties and, where applicable, their lawyers by ordinary letter to appear at the sitting decided on by the court (Section 706 of the Judicial Code).

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

There are indeed charges to be paid to the court.

When the application is filed, the applicant has to pay the contribution referred to in Section 4(2) of the Act of 19 March 2017 establishing a budget fund for second-line legal aid (*Wet van 19 maart 2017 tot instelling van een begrotingsfonds voor tweedelijnsrechtsbijstand*), which currently amounts to €20.

During the proceedings, the parties have to pay certain costs relating to the proceedings, which depend on the procedures decided on by the court (investigative measures, experts' fees and costs, travel costs, etc.).

After the proceedings the court will order the losing party or, in the absence thereof, the claimant to pay the planning fee, the amount of which varies from case to case. These amounts are set out as follows in Section 2691 of the Registration, Mortgage and Court Fees Code (*Wetboek der registratie-, hypotheek- en griffierechten*):

civil magistrate's courts and police courts: a fee of €50;

courts of first instance and business courts: a fee of €165;

appeal courts: a fee of €400;

Court of Cassation: a fee of €650.

Certain cases are exempt from the planning fee, in particular those that fall under the jurisdiction of the labour tribunals and those relating to bankruptcy and judicial reorganisation.

Furthermore, the costs will be charged, in principle, to the losing party in the final decision, where appropriate as a matter of course, in accordance with Section 1017 of the Judicial Code. These costs have to be paid or refunded to the other party. The costs relating to the proceedings comprise (Section 1018 of the Judicial Code):

the various court registry and registration fees, as well as the stamp duties paid prior to the repeal of the Stamp Duties Code (*Wetboek der zegelrechten*);

the price and the emoluments and remuneration associated with judicial documents;

the price for delivery of the judgment;

the expenses relating to all investigative measures, including witnesses' and experts' fees;

the travel and accommodation costs of magistrates, court registrars and the parties, if they have been ordered to travel by the court, and the costs of the documents, if these have been drawn up solely for the purposes of the proceedings;

the statutorily prescribed contribution towards the other party's legal representation costs, as stipulated in Section 1022;

the fees, emoluments and charges of the mediator designated in accordance with Section 1734;
the contribution referred to in Section 4(2) of the Act of 19 March 2017 establishing a budget fund for second-line legal aid. The lawyer's fees and charges are not included in the court costs as such. These are agreed between the lawyer and client. Each party shall therefore pay the fees and charges of its lawyer.
The losing party is obliged to pay a statutorily prescribed contribution towards the other party's legal representation costs (Sections 1018 and 1022 of the Judicial Code). This is a lump sum contribution to the fees and fee-based remuneration of the lawyer of the winning party. The amount of this fee-based remuneration and the way in which it is calculated and awarded are stipulated in the Royal Decree of 26 October 2007 (*koninklijk besluit van 26 oktober 2007*).

11 Can I claim legal aid?

(information pack 'Legal aid')

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

The action is actually brought once it has been entered on the general cause list, even in the case of voluntary appearance.
Actions based on an application and in interlocutory proceedings are entered on a special cause list, which actually stipulates that they have been brought.
The parties involved do not receive any confirmation, but they can consult the general cause list to ensure that the matter has been entered. Once the action has been entered on the list, it is the court's responsibility to give a ruling on the case.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

In general, information regarding the course of the proceedings is provided by the party's lawyer where the party is represented by a lawyer. Information can also be obtained from the registry of the court before which the action is pending. The writ of summons also contains information about the date of the court hearing and the court before which the action is pending.
At a first stage, specific information is given about the initial hearing.
In the case of a summons, the court bailiff informs the applicant of the date of the initial hearing, which constitutes the first stage of the proceedings.
In the case of an *inter partes* application or a voluntary appearance, the parties are notified by the registrar.
In the case of a unilateral application, no hearing takes place. The applicant can, however, be summoned by the registrar should the judge wish to ask any questions.
In a second stage, the case is prepared for trial. Each party is given a deadline stipulated by law (Section 747(1) of the Judicial Code) to submit documents and findings (written arguments and defences). Where these deadlines are not complied with, the sanctions in Section 747(2) of the Judicial Code can be imposed.
When the case is ready for trial and is ready to be pleaded, the parties request that a date be set for the hearing. The period within which a day for the hearing can be set is dependent on the court's workload and the time that can be set aside to hear the case. As a result of procedural issues that arise in some cases (appraisals, hearing from the parties and witnesses, etc.), it can be hard to determine the overall duration of proceedings in advance. After all, proceedings can be interrupted or suspended, or may even be cancelled due to procedural issues.
At the end of the hearing, the debates are concluded and the court will consider the matter. In principle, the court has to pronounce a ruling one month after the case has been considered pursuant to Section 770 of the Judicial Code.

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